



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/167437

PRELIMINARY RECITALS

Pursuant to a petition filed July 21, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on August 13, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits from the Petitioner in the amount of \$2,489.06 for the period of June 15, 2014 – October 31, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: Lareina Horton

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On May 2, 2013, Petitioner contacted the agency to report new employment at [REDACTED]. She reported that she is paid cash, \$7/hour, 20 hours/week. Petitioner requested child care benefits. Proof of U.S. citizenship of Petitioner's children was provided. Eligibility was approved pending verification of Petitioner's income.
3. On May 9, 2013, the agency processed an employer verification form submitted by the Petitioner.
4. On May 13, 2013, the Petitioner contacted the agency for authorization of child care hours. She reported that she works an average of 20 hours/week, Monday – Friday, 8 a.m. – 2 p.m. She reported her husband works an average of 40 hours/week, Monday – Friday, 9 a.m. – 5:30 p.m.
5. On May 20, 2013, the agency authorized child care benefits for Petitioner's non-school aged child for 25 hrs/week (20 work hours + 5 travel hours) from May 19, 2013 – November 2, 2013.
6. On July 9, 2013, Petitioner contacted the agency to request child care authorization for a school-aged child in addition to her non-school aged child. Authorizations for both children were approved for 24 hours/week and 4 hours/week travel for the period of July 7, 2013 – November 2, 2013.
7. On September 23, 2013, the Petitioner submitted a renewal. No changes were reported. On September 27, 2013, Petitioner submitted an employer verification from [REDACTED]. She reported she is paid cash and no taxes are taken out of her wages. Petitioner was given self-employment income report forms (SEIRFs) to complete.
8. On October 1, 2013, the Petitioner submitted her husband's pay statements for September, 2013. She also submitted SEIRFs for September – February reporting that she receives \$560/month from [REDACTED]. The agency authorized continuing child care benefits.
9. On October 2, 2013, the agency issued a Notice of Child Care Eligibility to the Petitioner informing her that she was eligible for CC benefits effective November 1, 2013. The agency determination of eligibility was based on Petitioner's husband's earned income of \$2,037.34/month and Petitioner's self-employment income of \$560/month.
10. On April 8, 2014, the Petitioner completed a renewal. No changes were reported. Child care authorizations were continued.
11. On July 21, 2014, the Petitioner submitted a renewal application. She reported income from [REDACTED] of \$186.67/month. However, she reported it as three separate items which totals \$560.01 for the month.
12. On October 7, 2014, the Petitioner submitted a renewal application. She reported income from [REDACTED] of \$186.67/month. Again, she reported it as separate items. This time, however, she reported it as six separate items totaling \$1,120 for the month.
13. On October 8, 2014, the agency issued a Notice of Proof Needed to the Petitioner requesting employment and income information about her husband's employment/income and her employment and income from [REDACTED]. The information was due by October 16, 2014.
14. On October 16, 2014, the Petitioner submitted SEIRFs reporting income of \$560/month from [REDACTED] for May – October, 2014. The agency contacted the Petitioner to request 2013 taxes. Petitioner reported she did not file tax returns for 2013.
15. On October 17, 2014, the agency issued a Notice of Child Care Eligibility to the Petitioner informing her that her child care benefits would end October 31, 2014 because both parents were not participating in an approved activity.
16. On November 17, 2014, the agency received a report from the Petitioner that she is no longer working at [REDACTED] as of October 31, 2014 and her last pay check will be issued on November 7, 2014.

17. On June 8 and 9, 2015, the agency issued Child Care Client Overpayment Notices and worksheet to the Petitioner informing her that the agency intends to recover an overissuance of child care benefits in the amount of \$2,489.06 for the period of June 15, 2014 – October 31, 2014 due to agency error in determining eligibility.

DISCUSSION

Wis. Stat. § 49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat. § 49.155, and thus they are within the parameters of Wis. Stat. § 49.195(3). Recovery of child care overpayments also is mandated in the Wis. Admin. Code §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency. The overpayment period for an agency error claim ends with the month the error last occurred and extends back 12 months or when the error first became effective, whichever is most recent. The overpayment period for a non-client error cannot begin more than 12 months prior to the notification date of the overpayment. Wisconsin Shares Child Care Manual (CCM) (Revised 12/10/2013), § 3.5.2.

Child care benefits may be issued for children who are US citizens. CCM, § 1.4.5.

To be eligible for child care benefits, both parents in a two-parent household must be engaged in an “approved activity.” CCM, § 1.4.8.2. Approved activities include unsubsidized employment and legitimate self-employment.

An applicant/recipient has the primary responsibility to provide verification and resolve questionable information. CCM, § 1.7.3. The agency may request any information that is necessary and appropriate in order to make a correct eligibility decision. However, the agency is not to verify an item that is not required or is not questionable. CCM, § 1.7.1.

To verify self-employment income, the CCM states as follows:

When the prior year’s self-employment income tax information is available, and the past circumstances represent present circumstances, (this would include normal business fluctuations based on the type of business) use the prior year’s tax form to calculate a monthly income amount (See example 1).

When the prior year’s self-employment income tax information is not available or the past circumstances do not represent present circumstances and at least 6 months (or more) of actual self-employment income information is available, use all the month’s income to establish a monthly income amount.

When the prior year’s self-employment income tax information is not available or the past circumstances do not represent present circumstances, the applicant or recipient must complete a SEIRF for the months the business has been in operation or for the

months of operation since a change in circumstances. . .

CCM, § 1.6.15. (emphasis added)

In addition, the CCM states that all self-employment cases must have *either* a corresponding SEIRF *or* tax forms scanned into the electronic case file. CCM, § 1.6.18. It further states that a copy of the previous years' taxes must be included if it is an on-going business. Id. However, if an applicant is unable to produce requested verification, the application must not be denied based upon the information that could not be obtained. Instead, the agency must use the available information to process the case. CCM, § 1.7.6. Acceptable forms of employment verification are paycheck stubs, a letter from the employer, self-employment business tax records, SEIRFs, CARES data exchange/UI query or an EVFE. CCM, § 1.7.15.

The CCM provides further guidance for self-employment:

If the validity of the self-employment is in doubt, seven or more of the following conditions must be met by the applicant:

1. The individual holds or has applied for an identification number with the federal Internal Revenue Service.
2. The individual has filed business or self-employment tax returns with the federal Internal Revenue Service based on such services in the previous year or, in the case of a new business, in the year in which such services were first performed.
3. The individual maintains a separate business with his or her own office, equipment, materials, and other facilities.
4. The individual operates under contracts to perform specific services for specific amounts of money and under which the individual controls the means and methods of performing such services.
5. The individual incurs the main expenses related to the services that he or she performs under contract.
6. The individual is responsible for the satisfactory completion of services that he or she contracts to perform and is liable for a failure to satisfactorily complete the services.
7. The individual receives compensation for services performed under a contract on a commission or per-job basis and not on any other basis.
8. The individual may realize a profit or suffer a loss under contracts to perform such services.
9. The individual has recurring business liabilities or obligations.
10. The success or failure of the individual's business depends on the relationship of business receipts to expenditures.

CCM, § 1.5.3.7 (emphasis added).

In this case, the agency representative testified that the Petitioner was not in an approved activity during the overpayment period because she was unable to provide the previous years' tax returns to verify her self-employment. The agency asserts that child care operations policies in the CCM require an individual engaged in on-going self-employment to provide the previous year's tax return to continue to remain eligible for benefits. I disagree that the policies state what the agency represents. That is, the policies in the CCM did not require the Petitioner to produce the previous year's tax return to verify that she was engaged in legitimate self-employment.

The agency did not produce evidence that there was doubt as to the Petitioner being employed with the [REDACTED]. In addition to the SEIRFs she submitted, there were also verifications of her employment

from [REDACTED]. The manual clearly states that only when self-employment is in doubt should the agency request verification through tax returns and other items listed in CCM § 1.5.3.7.

With regard to her self-employment income, the policy manual provisions above clearly state that if the previous year's tax return is available, the applicant/recipient should provide it to verify self-employment income. However, the manual provisions also clearly state that a SEIRF may be provided and that, if the previous year's tax return is not available, the agency is to use the best information available to verify self-employment.

In this case, the agency representative testified that Petitioner's self-employment income became questionable when she reported monthly income of \$186.67 in her July, 2014 renewal. I disagree that it was questionable at that time. She actually reported \$560.01 of self-employment income in her July, 2014 renewal though it was done in a confusing manner. This was consistent with her previous income reports and SEIRFs.

In summary, based on the CCM provisions, the Petitioner's SEIRFs were sufficient verification of her self-employment. Because there is no evidence that her employment or income was questionable, there was no basis for the agency to request her tax returns. Even if there was a basis for requesting the returns, the Petitioner's inability to produce the returns would have required the agency to use the best available evidence, ie the SEIRFs, to determine her monthly income and her eligibility. Therefore, based on the evidence presented, I conclude that the agency did not properly determine that the Petitioner was not engaged in legitimate self-employment for the period of June 15, 2014 – October 31, 2014. The agency may not recover an overissuance of child care benefits from the Petitioner for the period of June 15, 2014 – October 31, 2014.

CONCLUSIONS OF LAW

The agency did not properly determine that the Petitioner was not engaged in legitimate self-employment for the period of June 15, 2014 – October 31, 2014 and may not recover an overissuance of child care benefits during that period on those grounds.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to rescind the child care overpayment (Claim # [REDACTED]) issued to the Petitioner and to cease all actions to collect from the Petitioner. These actions shall be completed as soon as possible but no later than 10 days from the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

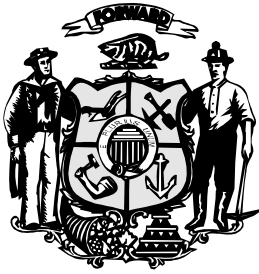
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 13th day of November, 2015

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 13, 2015.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud